

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

RETAIL DIGITAL NETWORK, LLC,  
*Plaintiff-Appellant,*

v.

TIMOTHY GORSUCH, as Director of  
the California Department of  
Alcoholic Beverage Control,  
*Defendant-Appellee.*

No. 13-56069

D.C. No.  
2:11-cv-09065-  
CBM-PJW

ORDER

Filed November 16, 2016

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**ORDER**

THOMAS, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be heard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judge Owens did not participate in the deliberations or vote in this case.